

1 Hon. Richard A. Jones  
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7 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 NICHOLAS T. PINES, ) CASE NO. 19-CV-512 RAJ  
9 Defendant-Petitioner, ) 17-CR-187 RAJ  
10 v. ) ORDER GRANTING 28 U.S.C. §  
11 UNITED STATES OF AMERICA, ) 2255 MOTION AND ORDER  
12 Plaintiff-Respondent. ) VACATING JUDGMENT,  
 ) WITHDRAWING GUILTY PLEA  
 ) AND DISMISSING INDICTMENT  
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BEFORE THE COURT is Nicholas Pines' Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody. Dkt. No. 1. In 17-CR-187-RAJ, in a judgment imposed on April 6, 2018, Mr. Pines was convicted of one count of felon in possession of a firearm under 18 U.S.C. § 922(g)(1). The alleged predicate conviction was a King County Superior Court Juvenile Department disposition for one count of taking a motor vehicle without permission under King County Sup. Ct. No. 00-8-01729-6. Mr. Pines's petition under § 2255 was based in part on claims of actual innocence and ineffective assistance of counsel because the predicate conviction from Washington State was not punishable by a term exceeding one year.

1           Upon the agreement of the parties, the Court stayed consideration of this  
2 matter pending the decision of the Ninth Circuit in *United States v. McAdory*,  
3 No. 18-30112. Dkt. Nos. 9, 13. On August 28, 2019, the Ninth Circuit issued its  
4 decision in *United States v. McAdory*, 935 F.3d 838 (9<sup>th</sup> Cir. 2019). Dkt. No. 15.  
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6 On November 18, 2019, the Government filed a status report, stating that the Office  
7 of the Solicitor General of the United States elected not to seek further review in  
8 *McAdory*, and that based on the Ninth Circuit's opinion in *McAdory*, the  
9 Government would concede Mr. Pines' motion to vacate his conviction in 17-CR-  
10 187-RAJ. Dkt. No. 15.

12           Accordingly, **IT IS HEREBY ORDERED:**

13           1.       Mr. Pines' Motion to Vacate, Set Aside, or Correct a Sentence by a  
14 Person in Federal Custody, Dkt. No. 1, is hereby **GRANTED**;

16           2.       The Judgment in a Criminal Case imposed on April 6, 2018, Dkt. No.  
17 38 of 17-CR-187-RAJ, is hereby **VACATED**;

19           3.       The plea of guilty entered on January 16, 2018, in accordance with the  
20 plea agreement, Dkt. No. 24 of 17-CR-187-RAJ, is hereby **WITHDRAWN**;

21           4.       The indictment in 17-CR-187-RAJ. Dkt. No. 13, is **DISMISSED**  
22 **WITH PREJUDICE**; and

1           5. The pending petitions for revocation of supervised release and any  
2 related sentencing matters for those petitions in 17-CR-187-RAJ are hereby  
3 **STRICKEN.**  
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6           DATED this 5th day of December, 2019.  
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9           The Honorable Richard A. Jones  
10           United States District Judge